

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 97-596

January 5, 2000

PUBLIC UTILITIES COMMISSION  
Investigation of Stranded Cost Recovery,  
Transmission and Distribution Utility  
Revenue Requirements, and Rate Design of  
Bangor Hydro-Electric Company

ORDER DENYING  
MOTION FOR  
RECONSIDERATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY OF DECISION**

By this Order, the Commission denies Bangor Hydro-Electric Company's Motion for Reconsideration of our November 24, 1999 decision in this proceeding.

**II. DISCUSSION AND DECISION**

On December 1, 1999, Bangor Hydro-Electric Company (BHE or the Company) filed with the Commission a Motion for Reconsideration. The motion requested that the Commission reconsider its decision in this proceeding with respect to the revenue adjustment associated with the residential and commercial space heating programs. Specifically, the Company asked that the Commission "reconsider its decision to adopt a specific formula for this adjustment" and that it "permit the parties to establish a revised revenue delta adjustment and/or new rate for its residential and commercial space-heating customers as part of Phase II of this proceeding."

In its motion, the Company argued that the intent of the program was to protect core customers by retaining and increasing space heating load. BHE asserted that the space heat programs benefit all of its customers and that the revenue adjustment adopted by the Commission is, therefore, a "penalty imposed on its shareholders." The Company claimed that in the past it has been willing to bear this "penalty" but that the impact of the current adjustment is too significant for it to continue to accept. It also suggested that if the Company eliminates the rate at this time, space heat customers will tend to attribute the rate increase to restructuring.

With respect to the actual formula adopted by the Commission, the Company reiterated its arguments that 1) the mechanism should use BHE's previous residential discount space heat rate rather than the regular retail rate to determine the revenues that would have been received absent the program; and 2) the rate of decline in space heat sales that would have occurred absent the programs should have been assumed to be higher than the 4% adopted by the Commission. The Company further argued that the

results of the standard offer were not taken into account when the Commission adopted the adjustment mechanism and that it was not given adequate notice that the magnitude of the adjustment would be subject to change based on updated T&D rates. Finally, the Company requested that the Commission allow it a fair opportunity to adjust the space heat rates in this proceeding and that to do otherwise would deny either the Company its right to a fair return on its investment or customers the benefits of the program.

### III. DECISION

We do not find merit in BHE's arguments in support of its Motion to Reconsider. At the time BHE initiated these programs, the Commission had substantial and unresolved concerns regarding the Company's assumptions for the success of the space heat programs. Given these concerns, the Commission was unwilling to put ratepayers at risk for the programs' performance. Therefore, the Commission adopted a mechanism that would hold ratepayers harmless from any losses associated with these programs while allowing shareholders to maintain any gains. The Company did not dispute this mechanism and was fully aware that it was allowed to pursue these programs only by holding ratepayers entirely neutral to the actual success or failure of the programs.

The mechanism adopted in the original proceeding is the same one used by the Commission in this proceeding.<sup>1</sup> Under the mechanism, ratepayers are held neutral to the effects of the programs by assuming that absent the programs, space heat sales would have declined at a rate of 4%<sup>2</sup> per year and the remaining space heat load would have paid the regular retail rate. If the Company's predictions had been correct and the programs made money in the rate year, this mechanism would have entitled the Company to keep all of the profits without sharing with ratepayers. However, as feared by the Commission, those predictions did not hold true, and the Company is instead faced with losses that it cannot share with ratepayers.

We will not reconsider this ratepayer protection. The Company instituted these programs fully cognizant of the strong Commission concern regarding their profitability. The Commission allowed BHE to proceed only under the condition that the Company alone

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<sup>1</sup> We are not persuaded by the Company's assertion that it did not have adequate notice that this mechanism was to be implemented as a formula, subject to adjustment based on actual final rates. The mechanism has always been described as a "formula" that uses a 4% rate of decline and the regular retail rate. To the extent the regular retail rate changes, the adjustment changes. Further, all non-core revenues were expected to be updated based on actual generation rates.

<sup>2</sup> As stated in our November 24, 1999 Order, BHE may file a case to demonstrate that the assumed 4% rate of decline should be altered. If we decide to make such a change, we will consider the appropriateness of altering rates or deferring the rate impact until the next rate change.

be responsible for their financial success or failure. Moreover, the Company has had, and continues to have, discretion to adjust the rates under these programs.<sup>3</sup> The decision to change the rate, the level of any new rate and the timing of any rate change are all within the discretion of the Company. If it believes a higher rate will maximize revenues, it is free to implement that increase. Under the mechanism, other ratepayers will not be benefited by that increase. Therefore, any such increases are independent of the ratemaking determination in Phase II of this proceeding and need not be incorporated therein.

We note with concern the Company's assertion that if it raises these rates, customers will perceive this as "a consequence of restructuring." Motion to Reconsider at 3. In its original filing for this program, the Company indicated numerous times that it planned to increase the rate over time. Under its Alternative Marketing Plan, the Company is required to provide annual notice to customers regarding the length of availability of its discount rates. Further, the Company is required to "regularly inform customers receiving a discounted rate that the discount may be discontinued, and the rate implications in that event." BHE AMP Order, Docket No. 94-125, 94-273 at 22. Finally, in its Order allowing the space heat programs, the Commission indicated that it would review any space heat program marketing material to ensure that it accurately indicated to customers that the rate was subject to change. The letter the Company sent to customers initially offering the rate did indicate that the rate would be subject to change. Therefore, assuming BHE has met its obligation to provide customers with regular notification that the discount is subject to change, a rate increase based on changes to the cost of customers' alternatives or the cost of generation should not be unexpected.<sup>4</sup>

Therefore, for the reasons described above, we do not find merit in the Company's Motion for Reconsideration.

Accordingly, we

## ORDER

That Bangor Hydro-Electric Company's Motion for Reconsideration filed on December 1, 1999 is hereby denied.

Dated at Augusta, Maine, this 5th day of January, 2000.

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<sup>3</sup> For example, it was always contemplated that the space heat rate would track the cost of heating alternatives (e.g., the cost of heating oil).

<sup>4</sup> We assume, of course, that BHE is itself doing nothing to suggest to its customers that restructuring is the cause of any rate change for these customers. If the Company decides to increase the rate, there is no particular reason for that increase to occur on March 1, 2000. We would expect such a change to occur concurrently with an assessment that revenue would be maximized by a rate increase.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Nugent  
Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

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